

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re: PROMESA
THE FINANCIAL OVERSIGHT AND Title III
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS
as representative of (Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

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**INDEPENDENT INVESTIGATOR'S URGENT UNOPPOSED MOTION
FOR LEAVE TO FILE CERTIFICATE OF SERVICE UNDER SEAL**

Kobre & Kim LLP, the independent investigator (the “Independent Investigator”) retained by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), acting by and through the Special Investigation Committee of the Oversight Board (the “Special Investigation Committee”),² hereby submits this *Independent Investigator’s Urgent Unopposed Motion For Leave to File Certificate of Service Under Seal* (the “Motion to Seal”), seeking entry of an order substantially in the form annexed hereto as Exhibit A (the “Proposed Order”), permitting Prime Clerk LLC to: (1) publicly file, with a confidential exhibit redacted, the certificate of service (the “Certificate of Service”) for the *Notice of Presentment of Revised*

¹ The Debtors in these title III cases, along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK- 3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), and (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

² The Special Investigation Committee of the Oversight Board comprises of Members Ana J. Matosantos, David A. Skeel, and Judge Arthur J. Gonzalez (Ret.), and is charged with pursuing investigations pursuant to the authority granted to the Oversight Board by section 104(o) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) and such other authority vested in the Oversight Board under PROMESA.

Proposed Order Approving Motion of the Independent Investigator for an Order: (I) Establishing Procedures for Resolving Any Confidentiality Dispute in Connection with Publication of the Independent Investigator's Final Report; (II) Approving the Disposition of Documents and Information; (III) Relieving the Independent Investigator from Certain Discovery Obligations; (IV) Exculpating the Independent Investigator in Connection with the Investigation and Publication of the Final Report; and (V) Granting Related Relief [ECF No. 3718] (the “Notice of Presentment”)³; and (2) file an unredacted version of the Certificate of Service under seal.

Jurisdiction and Venue

1. This Court has jurisdiction over this matter under sections 106(a) and 306(a)(2) of PROMESA.
2. Venue is proper under sections 104(k), 106(a), and 307(a) of PROMESA.
3. The statutory basis for the relief requested herein is found in sections 105(a) of title 11 of the United States Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to these title III cases by sections 301(a) and 310 of PROMESA, and Local Rule 9018-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the “Local Rules”).

Relief Requested

4. On July 27, 2018, the Independent Investigator filed the Notice of Presentment. The Notice of Presentment was served by Prime Clerk LLC upon, among others: (i) all parties

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Motion of the Independent Investigator for an Order: (I) Establishing Procedures for Resolving Any Confidentiality Dispute in Connection with Publication of the Independent Investigator's Final Report; (II) Approving the Disposition of Documents and Information; (III) Relieving the Independent Investigator from Certain Discovery Obligations; (IV) Exculpating the Independent Investigator in Connection with the Investigation and Publication of the Final Report; and (V) Granting Related Relief* [ECF No. 3427] (the “Motion”).

that produced documents or shared information with the Independent Investigator in connection with the Investigation (the “Disclosing Parties”), including witnesses that have been interviewed by and parties that entered into the non-disclosure agreements with the Independent Investigator; and (ii) all parties that received a Preservation and Document Request Letter or Investigatory Subpoena (together with the Disclosing Parties, the “Confidential Parties”).

5. The full, unredacted version of the Certificate of Service for the Notice of Presentment includes an “Exhibit C” that identifies the Confidential Parties. Public disclosure of the identities of the Confidential Parties at this time could impact the effectiveness and integrity of the Investigation. Among other things, it would permit each witness in the Investigation to know the identity of each other witness with whom the Independent Investigator has been speaking. Further, certain Disclosing Parties may contend that the information contained on “Exhibit C” is subject to nondisclosure under confidentiality agreements with the Independent Investigator.

6. The Independent Investigator accordingly requests that the Court grant the Motion to Seal and allow Prime Clerk LLC to: (i) publicly file the Certificate of Service with “Exhibit C” redacted; and (ii) file under seal the full, unredacted version of the Certificate of Service, including “Exhibit C.” *See* Bankruptcy Rule 9018 (the court may “make any order which justice requires” in order to, among other things, “protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” or to “protect governmental matters that are made confidential by statute or regulation”).

7. The Independent Investigator additionally requests that the following parties be granted access to “Exhibit C” to the Certificate of Service: (a) counsel for the Oversight Board; (b) counsel for the Official Committee of Unsecured Creditors; and (c) counsel for Official

Committee of Retired Employees of the Commonwealth of Puerto Rico. *See* Local Rule 9018-1(b) (“The proposed order shall identify the parties, if any, who may have access to material that is under seal and under what circumstances.”).

8. The Court previously granted identical relief in connection with the filing of the certificate of service for the Motion and related Exit Procedures Reply [ECF No. 3666]. *See Order Granting Independent Investigator’s Urgent Unopposed Motion for Leave to File Certificate of Service Under Seal* [ECF No. 3448] and *Order Granting Motion to File Under Seal* [ECF No. 3687].

**Certification in Compliance with
the Fourth Amended Case Management Procedures and Local Rule 9013-1**

9. Pursuant to Local Rule 9013-1 and paragraph I.H of the *Fourth Amended Case Management Procedures* [ECF No. 2839-1], the Independent Investigator hereby certifies that it has (a) carefully examined the matter and concluded that there is a true need for an urgent hearing; (b) not created the urgency through any lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; (d) made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court; and (e) the Independent Investigator has conferred with counsel for the Oversight Board, counsel for the Creditors’ Committee, and counsel for the Retiree Committee, and none of these parties opposes the relief requested herein.

10. No previous request for the relief sought herein has been made by the Independent Investigator to this or any other court.

WHEREFORE the Independent Investigator respectfully requests entry of the Proposed Order.

Dated: July 31, 2018
San Juan, Puerto Rico

/s/ D. Farrington Yates

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The Independent Investigator

-and-

/s/ Luis F. del Valle-Emmanuelli

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Local Counsel for the Independent Investigator

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Luis F. del Valle-Emmanuelli
Luis F. del Valle-Emmanuelli

Exhibit A

Proposed Order

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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THE FINANCIAL OVERSIGHT AND Title III
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS
as representative of (Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
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ORDER GRANTING MOTION TO FILE UNDER SEAL

This matter is before the Court on the *Independent Investigator's Urgent Unopposed Motion For Leave to File Certificate of Service Under Seal* (the "Motion to Seal").² Finding good cause for the requested relief, this Court ALLOWS the Motion to Seal as set forth herein. Accordingly:

1. Prime Clerk LLC is authorized to publicly file the Certificate of Service with "Exhibit C" redacted.
2. Prime Clerk LLC is authorized to file under seal a full, unredacted version of the Certificate of Service.
3. The Clerk of the Court will provide access to "Exhibit C" of the

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion to Seal.

Certificate of Service to the following parties: (a) counsel for the Oversight Board; (b) counsel for the Official Committee of Unsecured Creditors; and (c) counsel for the Official Committee of Retired Employees of the Commonwealth of Puerto Rico.

This Order resolves Dkt. No. ____.

Dated: July __, 2018

HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE